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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,214	09/24/2003	David Kisela	RYLZ 2 00939-3	2151
27885	7590	04/21/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			TILL, TERRENCE R	
			ART UNIT	PAPER NUMBER
			1744	
DATE MAILED: 04/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/669,214	Applicant(s) KISELA ET AL.	
	Examiner Terrence R. Till	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-28,33-38,41-52,54,57 and 58 is/are rejected.
- 7) ☒ Claim(s) 29-32,39,40,53,55,56,59 and 60 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/04</u> . | 6) <input type="checkbox"/> Other: ____. |

12

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 16-22, 25, 24, 26, 27, 33-35, 42-49 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 15-23, 25, 26, 32-34 and 41-48 of copending Application No. 10/340,691. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

3. The claims are verbatim and correspond to the listing of claims of the copending application '619 seriatim.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1744

1. Claims 1-13, 15, 28, 36, 37, 41 and 50-52 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, 27, 35, 36, 39 and 49-51 of copending Application No. 10/340,691. Although the conflicting claims are not identical, they are not patentably distinct from each other because in the present application 10/669,214, applicant recites, in claims 1, 36 and 50 that the dirt collection assembly, source of suction, liquid delivery system (claim 36) can be carried by either the cleaning head, handle or nozzle (claim 36). In the copending '691 application, in claims 1, 35 and 49, applicant limits the source of suction to being carried by the handle, the liquid delivery system to being mounted to either the housing or suction nozzle and the spray nozzle being mounted to the cleaning head. The claims are not verbatim, but claims 1, 35 and 49 of the '691 application fully encompass claims 1, 36 and 50 of the '214 application as all the limitations of the claims are met by the copending application's claims. All other claims grouped with this rejection of the present application are verbatim of the corresponding claims in the '214 application, in seriatim with the exception of claim 28, which is fully encompassed by claim 27 of the '691 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1744

3. Claims 1-3, 5, 6, 11, 12, 14-16, 17, 19, 21, 25, 27, 33, 36, 37, 42-44, 48, 50 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by European publication to Prudenziati (cited in IDS).

4. The patent to Prudenziati discloses a cleaning device comprising: a handle assembly, including an elongate handle, 3B; a rectangular cleaning head 1 pivotally attached to a first end of said handle assembly (see figures 3 and 4) and configured for receiving a replaceable cleaning pad 63 for collecting dirt from a floor surface to be cleaned; a spray nozzle 33 mounted on said cleaning head for delivering a cleaning fluid to a floor surface to be cleaned; a liquid delivery system 29,41,43 which delivers cleaning fluid to said spray nozzle, at least a portion of said liquid delivery system being carried by said handle assembly; a suction nozzle 13 carried by said cleaning head and pivotally mounted to the cleaning head; a dirt collection assembly, or dirt cup, 35 for collecting dirt and in fluid communication with said suction nozzle received in a socket of the handle housing, said dirt collection assembly being carried by said handle assembly; and a source of suction 37, carried by said handle assembly and fluidly connected with said dirt collection assembly, for creating a flow of working air which draws dirt from said suction nozzle into said dirt collection assembly. Prudenziati further discloses a fluid supply pump 43, the cleaning head having a substantially flat lower surface onto which the cleaning pad is mounted and a conduit 3A, 35A extending between the suction nozzle and the dirt cup. Prudenziati additionally discloses at least one securing member 55 for securing the cleaning pad to the cleaning head. With respect to claim 48, Prudenziati is considered to disclose all the recited subject matter and with respect to the preamble. The recitation "A cleaning device having two separate and distinct modes of operation, wherein a first mode of operation comprises suctioning

Art Unit: 1744

debris from a surface to be cleaned, and a second mode of operation comprises application of a cleaning liquid to the surface, a cleaning pad being used to collect dirty cleaning liquid and dust and debris from the surface to be cleaned, said cleaning device comprising:” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

5. Claims 57 and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Grey.

6. The patent to Grey discloses a cleaning device comprising: a suction nozzle 50; a dirt collection assembly 40 for collecting dirt and in fluid communication with said suction nozzle, the dirt collection assembly including: a dirt cup 41 configured for collecting a first portion of the dirt, a baffle 66 received within the dirt cup and defining a well (below 69) in the lower region, the baffle providing a tortuous path for air and entrained dirt, the baffle defining a dirt receiving region configured for collecting a second portion of the dirt, and a filter 71 received within the dirt cup; and a source of suction, fluidly connected with said dirt collection assembly, for creating a flow of working air which draws dirt from said suction nozzle into said dirt collection assembly.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1744

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prudenziati in view of Richmond et al.

11. The patent to Prudenziati discloses all the recited subject matter with exception of a latch for securing the dirt cup and a rechargeable battery pack coupled with a recharging station. The patent to Richmond et al. discloses a vacuum cleaner having a dirt cup 700 mounted to the housing 200 by a latch 202 and a rechargeable battery pack 214 which can be recharged by mounting the housing to a charging station 910. It would have been obvious to a person skilled

Art Unit: 1744

in the art at the time the invention was made to provide a latch to the device of Prudenziati in view of the teaching of Richmond et al. as there needs to be some way to secure the dirt cup to the housing. Additionally, it would have been obvious to a person skilled in the art at the time the invention was made to provide a rechargeable battery mounted in the housing which can be recharged by mounting the housing to a charging station in view of the teaching of Richmond et al. order to free a user to use the device anywhere in the house without the encumbrance of a cord.

12. Claims 22,23, 34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over European publication to Prudenziati in view of Morgan et al.

13. Prudenziati discloses all of the recited subject matter with exception of disclosing a baffle and filter detachably mounted in the dirt cup and a switch, mounted on the handle to control operation of the suction fan and motor. The patent to Morgan et al. discloses a floor cleaning device similar to that of Prudenziati which further discloses a baffle 574, a filter 562 before the motor fan and a switch assembly 704 mounted to the handle. It would have been obvious to a person skilled in the art at the time the invention was made to provide Prudenziati with a baffle and filter detachably mounted in the dirt cup in order to prevent any airborne debris or moisture from getting into the motor and shortening its life. Also, as a switch is necessary to the operation of Prudenziati, it would have been obvious to a person skilled in the art at the time the invention was made to provide Prudenziati with a switch located on the handle in view of the teaching of Morgan et al. as a switch is necessary to control the operation of the motor/fan assembly.

Art Unit: 1744

Allowable Subject Matter

14. Claims 29-32, 39, 40, 53, 55, 56, 59 and 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

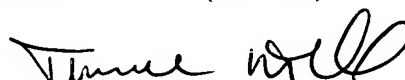
Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Sovis, Parker et al., Scalifani et al., Sham et al., Grey, Hammeken et al. and Kozak disclose various cleaning devices useful for cleaning floors- some even depositing liquid. The publication to Murphy et al. discloses a similar apparatus by the same assignee.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sun U. Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Terrence R. Till

Application/Control Number: 10/669,214

Page 9

Art Unit: 1744

Primary Examiner
Art Unit 1744

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